IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7750 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJYAKUMAR G PARIKH

Versus

GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 7750 of 1990

MR JD AJMERA for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/11/2002

ORAL JUDGEMENT

1. The petitioner challenges the communication issued by the respondent No.4 - school on 21st March 1990, at Annexure "F" to the petition, by which he was informed that he was not entitled to the pay-scale applicable to the teacher of higher secondary school and seeks a direction on the respondents to treat him as having been appointed as a craft teacher in the higher secondary school and to declare that he was entitled to the pay-scale of Rs.350-600 with effect from the date of his appointment and to the corresponding revised pay-scale of Rs.1350 - 2200 with all consequential benefits.

2. According to the petitioner, he was appointed by order dated 31st July 1986, at Annexure "A" to the petition, pursuant to the post created by the order of the Director of Education in the pay-scale of Rs.330 560 and he resumed his duty on 4th August 1986. He was appointed in the secondary section of the higher secondary school, Diwada Colony. Since he was asked to teach some classes in the higher secondary school, he was paid an extra allowance of Rs.50 per month between 1986 and 1988. According to the petitioner, this was discontinued from February 1988. From this, the petitioner has contended that it should be inferred that he was absorbed in the higher secondary section. It is also the petitioner's case that a teacher, who is appointed to teach craft subject, is entitled to salary in the pay-scale of Rs.350 - 600 under the Desai Pay Commission recommendations, and therefore, he would be entitled to the corresponding pay-scale of Rs.1350 - 2200 recommended by the Fourth Pay Commission. According to him, he suffered an economic loss of Rs.50 per month under the old pay-scale. In paragraph 5 of the petition, it is contended that it appears that, through inadvertence or by some mistake in his appointment order, his appointment is described as appointment in the secondary section, and that he should be treated as having been appointed in the higher secondary school as a craft teacher for teaching the subject of electrical gadgets.

3. In the affidavit-in-reply filed on behalf of the respondents authorities, it is stated that the petitioner was appointed in the secondary section of the Government Secondary School, Diwada Colony as an Assistant Teacher / Craft Teacher in the pay-scale of Rs.330 - 560. It is stated that his appointment was against the post which was sanctioned by the State Government in the pay-scale of Rs.330 - 560 by letter dated 18th December 1985. It is also stated that there was no post of craft teacher

sanctioned by the Government in the higher secondary school and therefore, there was no question of appointing the petitioner in the higher secondary section of the school. As there was no craft teacher available in the higher secondary section, the petitioner was asked to take classes in the higher secondary section also, and for that, he was paid an allowance of Rs.50 per month, which allowances was stopped since March 1988. He was therefore entitled to the revised pay-scale of Rs.1200 -2040 against his pay-scale of Rs.330 - 560.

4. The learned counsel appearing for the petitioner contended that since the petitioner was appointed to work as a craft teacher, he was entitled to the pay-scale of Rs.350 - 600 and was, therefore, wrongly given the pay-scale of Rs.330 - 560. He had passed 12th Standard and had obtained Diploma in Electrical Engineering and was asked to take classes in the higher secondary section where the subject of electrical gadgets was to be taught. It was submitted that there was no post of craft teacher in the secondary school, because, craft is taught in higher secondary school section. Therefore, while appointing the petitioner in the secondary section when he was asked to take craft class in the higher secondary section, he should be treated as having been really appointed in the higher secondary section.

5. The appointment order of the petitioner, which is at Annexure "A" to the petition, clearly refers to the fact that his appointment was made against the post which was created in the pay-scale of Rs.330 - 560, and that it was being made in the secondary section. This was subject to the conditions which were attached to the appointment order. There is a clear reference in the appointment order to the order dated 30th December 1985 of the Director of Higher Education.

6. The Government by their resolution dated 18th December 1985, a copy of which is placed on record, created 20 temporary posts of Assistant Teachers in the pay-scale of Rs.440 - 750 and 5 posts in the pay-scale of Rs.330 - 560, initially upto 28th February 1986. On the basis of this resolution, the Director of Education issued orders dated 30th December 1985 allocating the posts which were so sanctioned and these are the orders which are referred to in the appointment order of the petitioner. As per the said allocation done, one post of Assistant Teacher in the pay-scale of Rs.330 - 560 was sanctioned for the said secondary school of Diwada Colony. The appointment of the petitioner obviously was against the said post which was allocated to the

respondent - secondary school, Diwada Colony in the pay-scale of Rs.330 - 560. The petitioner cannot, therefore, claim any right higher than that which would spring from the nature of the post against which he was appointed merely on the basis of the fact that, in the appointment order, he is described as a temporary craft teacher. His appointment admittedly was in the secondary school and not in the higher secondary school.

7. Even according to the learned counsel for the petitioner, there was no subject of craft teacher in the secondary school in which the petitioner was teaching other subjects. Any arrangement of requiring the petitioner to take classes as a craft teacher in the higher secondary school for which he was given some extra payment, would not change the nature of his initial appointment which was in the pay-scale of Rs.330 - 560 which was attached to the post specifically created under the government resolution dated 18th December 1985 and which came to be allocated to the respondent school under the orders of the Director dated 30th December 1986. The petitioner, therefore, could not have claimed the higher pay-scale of Rs.350 600 which was applicable to craft teachers appointed in the higher secondary schools or its corresponding revised scale.

There is, therefore, no substance in this petition and the same is rejected. Rule is discharged with no order as to costs.

[R.K.ABICHANDANI, J.]

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